

## HEAD COACH OF FOOTBALL

### Employment Contract

This Employment Contract ("Contract"), effective December 7, 2012, by and between The Regents of the University of California, on behalf of the University of California, Berkeley campus (hereinafter "University") and Daniel Dykes (hereinafter "Coach") sets forth the terms and conditions of Coach's employment pursuant to Personnel Policies for Staff Members (hereinafter "PPSM") Policy 3 (Contract Position). This Contract supersedes and replaces the previous December 5, 2012 Letter Agreement between the parties, and any other agreements, whether written or oral, between the parties. The Contract Addendum is fully incorporated by reference into this Contract. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. **EMPLOYMENT.** University hereby employs Coach as Head Coach of Football, and Coach hereby accepts said employment, under the terms and conditions hereinafter set forth.
2. **PERFORMANCE OF DUTIES.** Coach agrees to faithfully and diligently devote substantially full time to the performance of the duties in said position, including those duties set forth in Paragraph 7 and any additional duties required by the Director of Intercollegiate Athletics or the Director of High Performance (including cooperating with any third parties with whom University has contractual commitments); any such duties shall be consistent with those reasonably assigned to the head football coach of a BCS level football program. Coach also agrees that he will not engage directly or indirectly in any business or other activities that would unreasonably detract from his ability to perform his best efforts in performance of his duties hereunder.
3. **DURATION.** This Contract is for a definite term as set forth in the Contract Addendum, as extended or earlier terminated in accordance with this Contract ("Term"). Except as set forth herein, the appointment shall terminate automatically on the termination date unless terminated earlier pursuant to the terms of this Contract. Should this Contract be extended, it shall terminate automatically upon the expiration date of the extension. In addition, this appointment or any extension thereof may be terminated in accordance with Paragraphs 9, 10, 11, or 12 of this Contract.
4. **WAIVER OF PROCEDURAL RIGHTS.** Coach understands and agrees that if this Contract is terminated under Paragraphs 10, 11, or 12 or if, under Paragraph 9, Coach is disciplined by any action other than termination, Coach is waiving Coach's rights to any process Coach might otherwise be due, including a Skelly hearing, a post-deprivation hearing and/or a liberty interest hearing. Coach attests that Coach is voluntarily waiving Coach's rights to such processes in exchange for the receipt of the bargained for consideration in Paragraph 5 of this Contract. Notwithstanding the foregoing, should Coach be terminated pursuant to Paragraph 9, Coach shall be entitled to the process outlined in Paragraph 6 of this Contract.

5. **COMPENSATION AND BENEFITS.** The Head Coach of Football position is assigned to title code 0332, which is in the Managers and Senior Professionals group in the PPSM Program (or equivalent title based upon the personnel program provisions in effect at the time).

(a) **COMPENSATION AND HOURS OF WORK**

The annual base salary for this position shall be as set forth in the Contract Addendum and payable in substantially equal monthly installments during the Term. Payments of the annual base salary and all other compensation shall be in accordance with the payroll policies of the University and subject to such deductions as may be required by applicable laws and regulations, or as authorized by Coach. Changes in compensation shall be only by written contract addendum signed by both parties, or by University pursuant to Paragraph 9 of this Contract.

Coach understands and agrees that, should other non-represented University employees be subject to a pay cut, reduction in time, furlough, or any other type of reduction in compensation, or any combination of them as a result of the University President's declaration of fiscal emergency, Coach will be subject to the same Base Salary pay cut, reduction in time, furlough or any other type of reduction in compensation, or any combination of them under the same terms and for the same period. Any such Base Salary pay cut, reduction in time, furlough, or any other type of reduction in compensation, or any combination of them shall automatically become a term of this Contract without any further action by either party.

(b) **PAID DAYS OFF**

Coach shall be entitled to paid days off as set forth in the Contract Addendum Paragraph 5. The paid days off shall be taken at a time or times approved by the Director of Intercollegiate Athletics or the Sport Supervisor.

(c) **SICK LEAVE**

Coach shall be entitled to sick leave for absence due to illness as set forth in Paragraph 6 and the Contract Addendum Paragraph 6. In addition, the Director of Intercollegiate Athletics may grant leave to Coach, upon Coach's request, with or without pay for other reasons, including illness.

(d) **HEALTH & WELFARE BENEFITS**

Coach shall participate in health and welfare benefits subject to the eligibility requirements of the University Benefit Program Group Insurance Regulations. Coach shall participate in the University Retirement Plan subject to the Standing Orders of the Regents of the University governing retirement and the terms of the UCRP. Should any Group Insurance Regulation or Standing Order of the Regents change during the Term, Coach's coverage shall be changed accordingly.

**6. APPLICATION OF PPSM AND OTHER POLICIES OF GENERAL APPLICATION TO UNIVERSITY EMPLOYEES.**

The PPSM Personnel Policies listed below and annexed hereto are incorporated into this Contract:

<b>PPSM Policy 1</b>	General Provisions
<b>PPSM Policy 2.210</b>	Absence from Work Policy
<b>III.A</b>	General Leave Provisions
<b>III.C</b>	Sick Leaves
<b>III.D</b>	Leaves Related to Life Events
<b>III.H</b>	Holidays
<b>PPSM Policy 3</b>	Contract Position (definition only)
<b>PPSM Policy 12</b>	Nondiscrimination in Employment
<b>PPSM Policy 63</b>	Investigatory Leave
<b>PPSM Policy 65</b>	Termination of Career Employees Section B. Notice and Decision only
<b>PPSM Policy 70</b>	Complaint Resolution only for complaints alleging discrimination and for termination under Paragraph 9 of this Contract; Sections D-H and only to the extent that Policy 70 is applicable to contract employees in MSP (Managers and Senior Professional) appointments
<b>PPSM Policy 80</b>	Staff Personnel Records
<b>PPSM Policy 82</b>	Conflicts of Interest

No other PPSM Personnel Policies shall apply. PPSM Personnel Policies may change from time to time. Any changes to the provisions referenced above shall be applicable to Coach and shall be incorporated into this Contract. General policies and regulations that are applicable to all University employees shall be applicable to Coach. This specifically includes the following:

- Business and Finance Bulletin G-39, Conflict Of Interest Policy And Compendium Of Specialized University Policies, Guidelines, And Regulations Related To Conflict Of Interest;
- University of California Conflict Of Interest Code;
- University Of California Policy On Reporting And Investigating Allegations Of Suspected Improper Governmental Activities (Whistleblower Policy);

- University Of California Policy For Protection Of Whistleblowers From Retaliation And Guidelines For Reviewing Retaliation Complaints (Whistleblower Protection Policy);
- University of California Policy on Sexual Harassment; and
- Policies Applying To the Disclosure of Information From Student and Staff Personnel Records.

7. **CONDUCT AND PERFORMANCE OF COACH.** In the performance of Coach's duties, Coach shall be directly responsible to and under the supervision of the University's Director of Intercollegiate Athletics or the Sport Supervisor. The parties agree that, although this Contract is sports-related, the primary purpose of the University and its intercollegiate athletics program is educative. Thus, the educative purposes of the University shall have priority in the various provisions of this Contract. Coach's conduct shall at all times be in a manner consistent with Coach's position as an instructor of students. Coach shall make no public appearance, either in person or by means of radio, television, or other medium, or otherwise knowingly allow the use of Coach's name in connection with Coach's relationship to the University when any such appearance or use of name may result in an unfavorable reflection upon the University. In addition, Coach shall be responsible for the list of specific duties and responsibilities set forth in Attachment A (attached hereto and incorporated herein by reference). The list supplements the other general duties and responsibilities set forth in this Contract.

8. **ATHLETICALLY RELATED INCOME AND/OR BENEFITS.** Coach hereby assigns to University all rights of any kind that Coach may have during the Term to enter into promotional, endorsement, or consultation contracts regarding the provision of in-kind goods, compensation or other financial remuneration that is in any way tied to Coach's affiliation with University ("Coach Agreements"). During the Term, Coach shall not enter into any such Coach Agreements except in accordance with this Section. If such contracts are determined to be desirable by the University, after reasonable consultation with Coach, the University has the discretion to decide to execute such contracts.

Notwithstanding the foregoing, Coach may enter into Coach Agreements with the advance written approval of the Director of Intercollegiate Athletics and shall annually report in writing any income from sources outside the University related to Coach's affiliation with University or status as coach for University (including income from non-University sport camps, income from annuities, housing benefits, ticket sales, radio, television and other media programs of any kind) through the Director of Intercollegiate Athletics to the Chancellor.

Coach shall neither participate in, nor allow Coach's name or likeness to be used in connection with, any commercial activity without consent from the Director of Intercollegiate Athletics or the Sport Supervisor; provided however that informal or spontaneous interviews initiated by media representatives (or other similar interviews that are typically more impromptu) are excluded from this section and the definition of "commercial activity" contained herein. "Commercial activity," as used herein, shall

include any appearance by Coach off the field of play, either in person or on radio or television, or the preparation by Coach of any news story or article for publication by any newspaper or periodical, irrespective of whether Coach receives any financial remuneration.

9. **DISCIPLINE AND TERMINATION.** Pursuant to this Paragraph 9, Coach may be disciplined, including terminated, for cause. For purposes of this Paragraph 9, cause includes:

- a. Material breach of any provision of this Contract, as determined by University, including neglect or inattention by Coach to Coach's duties or failure to obtain prior approval for outside activities or to report accurately all sources and amounts of income and benefits, as required by this Contract and/or by NCAA rules.
- b. Misconduct, including fraud or dishonesty of Coach in the performance of Coach's duties or responsibilities under this Contract, as determined by University.
- c. Failure to properly represent the University and the University's athletic programs in private and public forums, including by the commission of, participation in, or condoning of any act, situation or occurrence that, in University's judgment, brings Coach or University into public disrepute, embarrassment, contempt, scandal or unreasonable ridicule. This subsection encompasses findings or determinations of violations during the Term at any institution of higher education.
- d. A material violation by Coach, as determined by University of any University policy or procedure or any applicable law or regulation, including those policies listed in Section 6.
- e. Coach's sale, use or possession of any narcotics, drugs, controlled substances, steroids or other chemicals for which the sale, use or possession is prohibited by law or by the associations or agencies that govern the operation of athletic programs or athletic competition to which the University adheres. Likewise, the Coach's permitting, encouraging or condoning any such conduct by an assistant coach, other athletic staff member, or student athlete.
- f. Direct or indirect breach, as determined by University, whether willful or through negligence, of any of the rules and standards of the associations or agencies that govern the operation of athletic programs or athletic competition to which the University adheres, including the NCAA, Pacific-12 Conference, youth, collegiate, and master's amateur athletics. Without limiting the foregoing, discipline, including termination, shall result from a significant or repetitive or intentional violation (or pattern of conduct that may constitute or lead to a major violation) by Coach or any person under Coach's supervision and direction (including assistant coaches, other athletic staff member, and student athletes), as determined by University.

- g. Failure to follow the high moral and ethical standards commonly expected of Coach as a leading representative of the Department of Intercollegiate Athletics at the University.

Discipline under this Paragraph 9 may subject Coach to penalties including public or private reprimand, monetary fines, adjustments in compensation, suspension with or without pay, or termination, as determined by the Director of Intercollegiate Athletics.

Coach is hereby notified that in addition to the actions University may take in accordance with this Contract, Coach may also be subject to disciplinary and corrective action by the NCAA if Coach is found by the NCAA or University to be in violation of NCAA Bylaws.

In the event Coach is to be terminated pursuant to this Paragraph 9, Coach is entitled to notice and complaint resolution rights as delineated in Paragraph 6 above. In the event Coach is terminated pursuant to this Paragraph 9, Coach shall be entitled to an opportunity to appear before and/or to submit written materials to the Chancellor or his/her designate in order to test whether Coach was removed from his position in a manner consistent with the terms of this Contract. Such an appearance may take place either before Coach is removed from his position or after he is so removed. Coach's request to exercise this right must be made in writing to the Chancellor. Coach understands and agrees that the exigencies of operating an NCAA Division I football program require that matters involving the termination of Coach for cause be handled expeditiously to avoid the perception of confusion within and damage to the program. Coach agrees, therefore, that he shall have 10 calendar days from the date on which he receives notice that he is to be terminated for cause or from the date on which he is terminated, whichever occurs first, in which to request an appearance before and/or to submit written materials to the Chancellor or his/her designate. Such an appearance shall occur within 5 calendar days after Coach's request to so appear is timely received. The Chancellor or his/her designate shall review the matter and respond to Coach in writing within 3 calendar days. The parties understand and agree that this process represents an administrative remedy.

If Coach is terminated pursuant to this Paragraph 9, no further payment or benefits shall be made to Coach; provided that University has the discretion to pay to Coach all or part of earned compensation, including performance based compensation, earned as of the effective date of termination, taking into account Coach's compliance with the obligations set forth in the Contract, including Paragraphs 2 and 7 herein. If Coach is terminated pursuant to this Paragraph 9, all future rights and obligations of the parties hereto and hereunder thereupon shall cease. In no case, shall University be liable to Coach for the loss of any collateral business opportunities, or any other benefits, perquisites, income or consequential damages suffered by Coach as a result of University's termination of Coach's employment.

10. **TERMINATION BY DEATH OR DISABILITY OF COACH.** If Coach dies, this Contract shall thereupon terminate and all future obligations between the parties under

this Contract shall cease. In the event that Coach becomes disabled and there is no reasonable accommodation that will enable him to perform all of his essential job functions under this Contract and his inability to perform has continued or will continue beyond a reasonable period of time, as determined by the University consistent with applicable law, this Contract shall thereupon terminate and all future obligations between the parties under this Contract shall cease. In the event of Coach's inability to continue to perform all of his essential job functions under this Contract by reason of some other occurrence beyond the control of either party to this Contract, this Contract shall thereupon terminate and all future obligations between the parties under this Contract shall cease. Because of the exigencies of operating an NCAA Division I program, Coach acknowledges that a termination pursuant to this Section 10 shall not be deemed a termination without cause under Paragraph 12 below.

11. **TERMINATION BY MUTUAL AGREEMENT.** In addition to and exclusive of the foregoing provisions, there is also reserved to both parties the right upon mutual written agreement to terminate this Contract without cause at any time. Except as may be otherwise agreed to between the parties, in the event the right to terminate pursuant to this Paragraph 11 is exercised, all future obligations between the parties ceases effective the date of termination.
12. **TERMINATION BY UNIVERSITY WITHOUT CAUSE.** In addition to and exclusive of the foregoing provisions, there is also reserved to the University the right to terminate this Contract without cause at any time by giving written notice to Coach of such decision. Except as set forth below, in the event the University terminates this Contract without cause pursuant to this Paragraph 12, the University shall to pay to Coach as liquidated damages, in lieu of any and all other legal remedies or equitable relief, the following sum(s):

In the event the University terminates on or prior to **December 31, 2013**, University pays \$ **3,750,000**. In the event the University terminates Coach's employment after **December 31, 2013** but on or prior to **December 31, 2014**, the University shall pay to Coach \$ **3,000,000**. In the event the University terminates Coach's employment after **December 31, 2014** but on or prior to **December 31, 2015**, the University shall pay to Coach \$ **2,250,000**. In the event the University terminates Coach's employment after **December 31, 2015** but on or prior to **December 31, 2016**, the University shall pay to Coach \$ **1,500,000**. In the event the University terminates Coach's employment after **December 31, 2016** but on or prior to **December 31, 2017**, the University shall pay to Coach \$ **750,000**. Payment shall be made within thirty (30) calendar days following the termination of said employment.

These payments to Coach by University shall be paid in substantially equal monthly installments during what would have been the remaining term of this Contract had it not been terminated. University shall also pay to Coach all compensation including performance-based compensation earned by Coach prior to the effective date of termination. University shall not be liable to Coach for any University benefits or any collateral business opportunities or other benefits associated with Coach's position.

The parties recognize that a termination of this Contract by the University prior to its natural expiration may cause Coach to lose certain benefits, supplemental compensation, or outside compensation relating to Coach's employment at the University, which damages are difficult to determine with certainty. Accordingly, the parties agree to this liquidated damages provision, subject to mitigation as set forth herein, as a fair measure of Coach's losses and not as a penalty.

Notwithstanding the liquidated damages provisions below, Coach agrees to take affirmative steps to mitigate University's obligations to pay damages that may be sustained by virtue of termination pursuant to this Paragraph 12 by making reasonable efforts to obtain employment as a BCS level head coach or coordinator. Any amounts to be paid by the University to Coach pursuant to this Paragraph 12 shall be reduced by any amounts received, or to be received at a later date, by Coach from any source for any position, in and for rendition of services by Coach during the period of time in which Coach, pursuant to this Contract, would have been employed by the University if this Contract had not been terminated by the University without cause. Coach agrees to provide information about his mitigation efforts as reasonably requested by the University, in order to comply with his responsibilities pursuant to this Paragraph. In the event Coach enters an employment agreement, or receives compensation during the period of time in which Coach, pursuant to this Contract, would have been employed by the University if this Contract had not been terminated, Coach shall promptly inform the University of any such employment and of the amounts of such compensation. Coach shall also promptly inform the University of amounts of compensation to be paid at a later date for duties performed during this period. Coach warrants that in the event of a termination pursuant to this Paragraph 12, Coach shall not enter into any employment arrangements (including "volunteer" or "trial" arrangements) utilizing deferred or partially deferred compensation arrangements or any other mechanism by which compensation for services is delayed until after the Term has ended. Coach's signature on this Contract constitutes Coach's permission to any third party to promptly release to University, upon University's request, any contracts or other documents related to Coach's provision of services to any such third party, which permission Coach warrants that Coach shall not revoke for so long as University makes the payments due under this Paragraph 12.

Coach's right to payment under this Paragraph 12 is subject to Coach's execution of a release of claims at the time of employment termination, in the form attached as Appendix B and incorporated herein by reference.

In the event that Coach brings a claim in violation of the attached release of claims, all obligations of the University hereunder shall cease, and Coach shall repay forthwith and in full any and all post-termination payments received by Coach from the University under this Paragraph 12.

13. **TERMINATION BY COACH.** Coach recognizes that Coach's promise to work for the University for the entire Term of this Contract is of the essence of this contract to the



University. Coach also recognizes that the University is making a highly valuable investment in Coach's continued employment by entering into this Contract and its investment would be lost were Coach to resign or otherwise terminate Coach's employment with the University prior to the expiration of the Term, the loss of which University cannot be reasonably or adequately compensated in damages in an action at law. Moreover, Coach recognizes that during Coach's employment, Coach shall gain confidential information concerning University's athletic program and that use of this confidential information by another athletic program and at a Pac-12 athletic program in particular would place University at a serious competitive disadvantage. Additionally, Coach acknowledges that University would incur significant and substantial administrative, recruiting, and resettlement costs and loss of ticket revenue were Coach to leave University employment before the expiration of the Term and that such costs and losses are difficult to ascertain with certainty.

In the event Coach terminates on or prior to **December 31, 2013**, Coach pays University **\$3,000,000**. The parties agree that Coach's payment of the liquidated damages for this time frame is a fair measure of University's costs and losses and not a penalty.

In the event Coach terminates Coach's employment after **December 31, 2013** and on or prior to **December 31, 2014**, Coach shall repay to the University previously earned salary in the amount of **\$ 2,500,000**. In the event Coach terminates Coach's employment after **December 31, 2014** and on or prior to **December 31, 2015**, Coach shall repay to the University previously earned salary in the amount of **\$ 2,000,000**. In the event Coach terminates Coach's employment after **December 31, 2015** and on or prior to **December 31, 2016**, Coach shall repay to the University previously earned salary in the amount of **\$ 1,000,000**. In the event Coach terminates Coach's employment after **December 31, 2016** and on or prior to the conclusion of the 2016-2017 football season (including any bowl game in which the University is to participate), Coach shall repay to the University previously earned salary in the amount of **\$750,000**.

Payment pursuant to this Paragraph 13 shall be made within sixty (60) calendar days following the termination of said employment.

Coach understands that this Paragraph 13 is a material term of this Contract and that any breach of this paragraph will substantially harm University. Coach therefore agrees that, in the event Coach fails to pay the liquidated damages or to repay the previously earned salary specified herein, University shall be entitled to seek and enforce its full rights and remedies hereunder, including an action for full payment and damages.

The parties agree that Coach's payment of the liquidated damages set forth in this Paragraph 13 is a fair measure of University's costs and losses and not a penalty. University's right of payment under this Paragraph 13 is subject to University's execution of a release of claims at the time of employment termination, in the form attached as Appendix C and incorporated herein by reference.

Except as may be otherwise agreed to between the parties, in the event the right to terminate pursuant to this Paragraph 13 is exercised, all future obligations between the parties not set forth in Paragraph 13 cease effective the date of termination.

14. **ENTIRE AGREEMENT.** It is mutually understood that this Contract contains all of the terms and conditions to which the parties have agreed and that no other understandings or representations, either oral or written, unless expressly referenced herein, regarding the subject matter of this Contract shall be deemed to exist or to bind the parties hereto and that any modification, amendment, or addendum to this Contract shall only be by written instrument signed by each party hereto.
15. **INTERPRETATION.** No provision or part of this Contract which shall prove to be invalid, void or illegal shall in any way affect, impair or invalidate any other provision or part, and such other provisions and part shall remain in full force and effect.
16. **APPLICABLE LAW.** This Contract is made and entered into in the State of California, and the laws of California shall govern its validity and interpretation and the performance by the parties of their respective duties and obligations under this Contract.
17. **NOTICES.** All required notices and statements in connection with this Contract shall be in writing given to the parties at the addresses designated below, or such other addresses as either party may later designate in writing to the other.

If to Coach:

Daniel Dykes

  
[sdykes@berkeley.edu](mailto:sdykes@berkeley.edu)

AND

Russ Campbell  
Patrick Strong  
Balch Sports  
1901 6<sup>th</sup> Ave. N.  
Suite 1500  
Birmingham, AL 35203  
(205) 251-8100  
(205) 488-5859 FAX  
[rcampbell@balch.com](mailto:rcampbell@balch.com)  
[pstrong@balch.com](mailto:pstrong@balch.com)


**If to the UNIVERSITY:**

Dawn Howard, Associate Athletic Director  
University of California, Berkeley  
Intercollegiate Athletics  
115 Haas Pavilion #4422  
Berkeley, CA 94720-4422  
(510) 643-3296  
(510) 643-4498 FAX  
[dawnhoward@berkeley.edu](mailto:dawnhoward@berkeley.edu)

**IN WITNESS WHEREOF**, the parties hereto shall consider this Contract to be effective upon obtaining signatures as identified below.

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:**

By:  2/7/13  
\_\_\_\_\_  
John Wilton Date  
Vice Chancellor – Administration and Finance

By:  2/7/13  
\_\_\_\_\_  
Sandy Barbour Date  
Director of Intercollegiate Athletics

**COACH:**

By:  2/7/13  
\_\_\_\_\_  
Daniel Dykes Date  
Head Coach

## HEAD COACH OF FOOTBALL

### Contract Addendum

This Contract Addendum, effective on the ultimate date set forth in the signature blocks hereto, hereby defines certain terms for the Contract entered into on **December 7, 2012**, between The Regents of the University of California (hereinafter "University") and Daniel Dykes (hereinafter "Coach"). All of the terms of the Contract remain as first written unless modified in this Contract Addendum.

1. **TERM:** The term of the Contract began on December 7, 2012, and terminates on December 31, 2017 subject to the early termination provisions set forth in Paragraphs 9-11 in the Contract.

2. **COMPENSATION:**

**A. Base Salary**

The annual base salary (prorated monthly) for this position shall be \$250,000.00 per year.

**B. Talent Fee**

At the discretion of the Director of Intercollegiate Athletics, Coach may be assigned to speak at booster gatherings and related University and Alumni functions, appear on television and radio broadcasts of University sports games and sports shows dedicated to University sports, appear at events at request of corporate sponsors and speaking engagements, and make other appearances as directed by the Director of Intercollegiate Athletics or Sport Supervisor. Such appearances shall include pre-game and post-game shows connected with game broadcasts. Such appearances shall not unreasonably interfere with Coach's ordinary duties as Head Football Coach. Provided Coach fulfills these assignments, Coach shall receive an annual talent fee for each contract year in accordance with the schedule described below. Payment shall be prorated monthly and shall be paid in yearly total amounts as follows:

<u>Talent Fee Contract Year</u>	<u>Annual Talent Fee</u>
1. 12/31/12 – 12/31/13	\$1,550,000
2. 01/01/14 – 12/31/14	\$1,550,000
3. 01/01/15 – 12/31/15	\$1,750,000
4. 01/01/16 – 12/31/16	\$1,750,000
5. 01/01/17 – 12/31/17	\$1,850,000

On or before February 15, 2013, University will pay Coach \$104,560.42 of Talent Fee for the period 12/7/12 through 12/30/12. In addition, on or before February 15, 2013, University will advance Coach \$ 85,000 of his Talent Fee for Contract Year 1 ("Advance"). University will deduct a prorated amount of this Advance from

Coach's monthly payment of Talent Fee over the subsequent ten (10) month period beginning with the March paycheck. Should Coach's employment with University be terminated prior to 12/31/13 for any reason, Coach shall repay any remaining unpaid Advance within thirty calendar (30) days following the termination of said employment.

**C. Performance Based Compensation:**

At the discretion of the Director of Intercollegiate Athletics, in the event the University's Football team or Coach achieves any of the following accomplishments, Coach may receive the following enumerated performance bonuses for each Contract Year in which such performance is achieved, provided Coach is and has been in compliance with the obligations set forth in the Contract, including Paragraphs 2 and 7 thereof and provided that the team's single Academic Progress Rate and, beginning with the 2015-2016 football season, the four year average Academic Progress Rate is  $\geq 930$ . Annual performance bonuses shall be paid no later than sixty (60) days following the end of the season in which such performance bonuses are earned.

**FOOTBALL SEASONS 1-3**

<u>Accomplishment</u>	<u>Maximum Bonus Amount</u>
Wins seven regular season games	\$25,000
Wins eight regular season games	\$30,000
Wins nine regular season games	\$35,000
Wins ten regular season games	\$40,000
Wins eleven regular season games	\$45,000
Participates in Rose Bowl	\$60,000
Participates in Other BCS Bowl	\$50,000
Participates in Alamo Bowl	\$40,000
Participates in Holiday Bowl	\$30,000
Participates in Other Bowl	\$25,000

**FOOTBALL SEASONS 4-5**

<u>Accomplishment</u>	<u>Maximum Bonus Amount</u>
Wins seven regular season games	\$10,000
Wins eight regular season games	\$20,000
Wins nine regular season games	\$30,000
Wins ten regular season games	\$30,000
Wins eleven regular season games	\$40,000
Wins twelve regular season games	\$45,000

Participates in Rose Bowl	\$60,000
Participates in Other BCS Bowl	\$50,000
Participates in Alamo Bowl	\$40,000
Participates in Holiday Bowl	\$30,000
Participates in Other Bowl	\$25,000

Coach is eligible to receive identified bonuses for all levels of accomplishment achieved in a Contract Year.

#### **D. Camps and Clinics**

Coach shall direct and participate in the University's Football summer camp/clinic program at times determined by the Director of Intercollegiate Athletics. Camp compensation is included in Coach's Talent Fee.

#### **E. Courtesy Vehicle**

Two courtesy vehicles are assigned to Coach under terms and conditions contained in a separate Vehicle Assignment Agreement, incorporated into this Contract Addendum by reference. In the event the University does not have two courtesy vehicles available for Coach, Coach shall receive a monthly stipend of \$450 per vehicle until such vehicle(s) become available. This perquisite may be withdrawn by the Director of Intercollegiate Athletics at any time and shall be subject to any University policies as may be in effect from time to time.

#### **F. Athletic Equipment/Apparel Contract Payments**

Coach authorizes the University, during the Term, to enter into agreements with athletic equipment and apparel suppliers which require services on the part of the Coach including consultation, endorsement of products, and promotional appearances. Coach agrees to abide by such requirements, however, such requirements shall not unreasonably interfere with Coach's primary duties as Head Football Coach.

#### **G. Signing Bonus**

Coach shall receive a one-time signing bonus of \$594,000 on or before February 15, 2013.

#### **H. Academic Performance Bonus**

At the discretion of the Director of Intercollegiate Athletics, in the event the University's Football team or Coach achieves any of the following accomplishments, Coach may receive the following enumerated performance bonuses for each Contract Year in which such performance is achieved, provided Coach is and has been in compliance with the obligations set forth in the Contract,

including Paragraphs 2 and 7 thereof, and provided that the team's single Academic Progress Rate is  $\geq 930$  and, beginning with the 2015-2016 football season, the and four year average Academic Progress Rate is  $\geq 930$ . Annual academic performance bonuses shall be paid no later than thirty (30) days following the end of the period in which such performance bonuses are earned (applicable statistics made public).

i. **Grade Point Average (GPA):** Coach is eligible to receive the highest applicable bonus below achieved in a Contract Year:

<u>Academic Achievement</u>	<u>Bonus Amount</u>
$\geq 3.00$ team GPA (fall and spring terms)	\$23,000
$\geq 2.85$ team GPA (fall and spring terms)	\$20,000
$\geq 2.70$ team GPA (fall and spring terms)	\$10,000

ii. **Academic Progress Rate (APR):** If the four year average is  $\geq 940$ , Coach is eligible to receive the highest applicable bonus below achieved in a Contract Year:

<u>Academic Achievement</u>	<u>Bonus Amount</u>
$\geq 980$ team APR	\$23,000
$\geq 970$ team APR	\$20,000
$\geq 960$ team APR	\$10,000

iii. **Graduation Success Rate (GSR):** If the four year average is above 70%, Coach is eligible to receive the highest applicable bonus below achieved in a Contract Year:

<u>Academic Achievement</u>	<u>Bonus Amount</u>
$\geq 90\%$ team GSR	\$23,000
$\geq 80\%$ team GSR	\$20,000
$\geq 70\%$ team GSR	\$10,000

The Academic Progress Rate and the Graduation Success Rate shall be calculated in accordance with NCAA rules and guidelines.

Notwithstanding the foregoing, Coach agrees that if any state or federal agency challenges the payment of any bonus under this Contract, then without further action by the parties or amendment of this Contract, the University shall immediately be released from any obligation to make such payment hereunder for the remainder of the Term. In such instance, the bonus payment amount that would have been available pursuant to the challenged bonus category, shall be

reallocated to an academic performance bonus category that has not been challenged.

**3. OTHER COMPENSATION:**

Any or all of the following perquisites and benefits may be withdrawn by the Director of Intercollegiate Athletics at any time and shall be subject to any University policies as may be in effect from time to time. Without limiting the foregoing, provided Coach is and has been in compliance with the obligations set forth in the Contract, including Paragraphs 2 and 7 thereof, Coach shall be entitled to the following:

**A. Spouse or Domestic Partner and Family Travel**

The Director of Intercollegiate Athletics shall have the sole discretion to approve travel and funding for specified costs related to Intercollegiate Athletic events and other employment related or other public relations functions by Coach's Spouse or Domestic Partner and family when such events or functions are outside of the San Francisco Bay Area. All travel expenditures incurred shall be in compliance with University travel policies and procedures.

In the event University Football Team participates in a post season bowl game, Coach may bring his Spouse or Domestic Partner and his children on the bowl game trip. Trip shall include airfare and lodging and food for the Coach's Spouse or Domestic Partner. Trip for the Coach's children includes airfare and lodging only and does not include food.

**B. Tickets and Parking Passes**

Coach is entitled to receive complimentary tickets and parking passes to Cal Athletic events as follows:

Four premium Football season tickets in addition to the number of tickets Coach is eligible to receive under applicable departmental policy.

Five parking passes to all home Football games.

**C. Country Club Membership**

Coach shall receive a membership at Claremont Country Club for the duration of this contract. University shall pay the monthly country club membership dues for Coach. All other expenses shall be subject to the rules for reimbursement according to University policy and regulation. At the end of this contract or upon earlier termination, the membership shall be sold and the proceeds returned to the University.

**4. MOVING EXPENSES:**



All reimbursements and payments for moving expenses shall be in compliance with University policy and procedure.

University shall either provide or reimburse Coach for the following relocation costs. No other costs shall be reimbursed or paid. Reimbursement may not exceed actual costs incurred by Coach. Relocation must occur within twelve (12) months of Coach's initial hire.

- 1) University shall provide moving company services, including packing and moving services (does not include vehicle relocation).
- 2) All necessary travel costs (not including rental cars) for Coach and immediate family (not including pets). Travel must comply with UC Business & Finance Bulletin - Travel Policy G28.
- 3) University shall provide storage in transit, not to exceed 30 days.
- 4) Housing in transit, not to exceed 30 non-consecutive days.

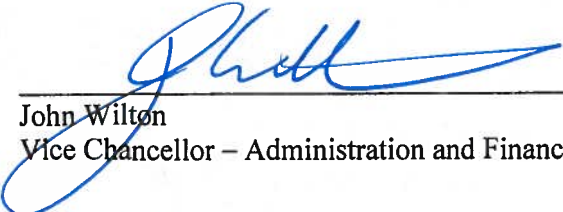
All relocation costs must be approved in advance by the University.

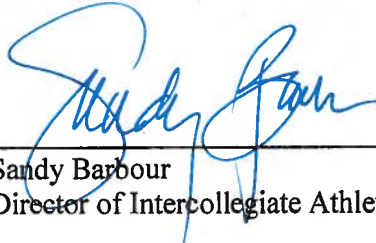
5. **PAID DAYS OFF (PTO) & OTHER LEAVES:** Coach shall be entitled to up to 20 paid days off at the beginning of each Contract Year. Paid days off are not carried forward to the next Contract Year and any unused paid days off expire at the end of the applicable Contract Year.
6. **SICK LEAVES:** Coach shall accrue and may use sick leave in accordance with the applicable provisions of the Personnel Policies for Staff Members in effect at the time during each month of this Contract. Unused sick leave shall be carried forward for the duration of Coach's employment with the University in accordance with applicable personnel policies in effect at the time.
7. **HEALTH AND WELFARE BENEFITS:** Coach is appointed for 100% of full-time and is eligible for all University health, welfare, retirement, and other benefits commensurate with the percent time appointment.
8. **REPORTING LINE:** Coach shall report directly to the Director of Intercollegiate Athletics and indirectly to the assigned sports supervisor.

[SIGNATURE PAGE FOLLOWS]


This Contract Addendum shall be effective upon obtaining signatures as identified below.

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:**

By:  2/4/13  
Date  
John Wilton  
Vice Chancellor – Administration and Finance

By:  2/7/13  
Date  
Sandy Barbour  
Director of Intercollegiate Athletics

**COACH:**

By:  2/7/13  
Date  
Daniel Dykes  
Head Coach

**Attachment A – Head Coach  
Specific Duties & Responsibilities  
(Subject to revision during Term)**

1. Athletic performance of Football team based on outcome targets agreed upon with Director of Intercollegiate Athletics in writing on a yearly basis, provided that failure to meet the targets agreed upon pursuant to this Section 1 of Attachment A will not constitute grounds for termination for cause pursuant to Paragraph 9 of the Contract.
2. Performance Reviews/Professional Development
  - a) Successfully completes post-season performance review with the Director of Intercollegiate Athletics, the Sports Supervisor, and the High Performance Director (HPD)
  - b) Successful creation and completion of an annual high performance plan
  - c) Annual formal written performance reviews conducted with all direct reports
  - d) Successful completion of the professional development program that was created and developed with the Sports Supervisor and HPD
3. Hold regular (weekly or bi-weekly) performance team meetings
4. Regular attendance and participation at coaches retreats, coaches meetings, and departmental specific meetings
5. Manage the Football program, including assisting with budget preparation, managing the team within the confines of the established budget, adhering to Department and University policies regarding fiscal responsibility, and administration, supervision and timely evaluation of the Football program's staff.
6. Build relationships with external stakeholders (donors, sponsors, patrons), fulfill all required fundraising activity, and actively participate with the Development staff to create a development community.
7. Demonstrate a commitment to the promotion of and adherence to compliance with NCAA, Pacific-12, Department, and University legislation and policies. Promptly report any violation of such rules or regulations to the Director of Intercollegiate Athletics or to the Sport Supervisor.
8. Demonstrate consistent support for student services and community programs.
9. Cooperate with and support the University's faculty and administrative officials regarding academic requirements for student-athletes, support and foster the ability of student-athletes participating in the Football program to meet academic requirements, reasonable efforts to satisfy academic goals for the Football team agreed upon with the Director of Intercollegiate Athletics and/or the Sport Supervisor in writing each year.

**10. Adhere to best practice recruitment**

- a) Recruiting student athletes who are a good 'fit' for University
- b) Clear structure and rationale to the recruiting process (use of an established evaluation tool)
- c) Clear due diligence in the recruitment process

## **APPENDIX B**

### **WAIVER AND GENERAL RELEASE OF CLAIMS**

This Waiver and General Release (hereafter "Release") is entered into by and between Daniel Dykes (hereafter "Coach") and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, on behalf of the UNIVERSITY OF CALIFORNIA, BERKELEY campus (hereafter "University") (collectively referred to as the "Parties").

#### **RECITALS**

**WHEREAS**, Coach was hired by the University on December 7, 2012, as Head Coach - Football; and

**WHEREAS**, Coach's employment is governed by the terms of an existing Employment Contract, the terms of which are incorporated hereto; and

**WHEREAS**, pursuant to Paragraph 12 of his Employment Contract, Coach may be terminated by the University without cause; and

**WHEREAS**, pursuant to Paragraph 12 of his Employment Contract, in order to receive liquidated damages under this provision, Coach must execute a waiver and release of all claims against the University at the time of his employment termination; and

**WHEREAS**, this waiver and general release of claims shall not include claims related to Coach's attempts to collect on amounts owed pursuant to Paragraph 12 of the Employment Contract.

**NOW, THEREFORE**, Coach and the University agree as follows:

1. **RELEASE OF ALL CLAIMS ("RELEASED CLAIMS")**. Coach agrees to hereby forever release and discharge the University, including all agents, successors, assigns, affiliates, attorneys, employees, and all other representatives (hereafter collectively referred to as "Releasees"), from any and all causes of action, judgments, liens, indebtedness, damages, losses, claims (including attorneys' fees and costs), liabilities and demands of whatsoever kind and character that he may now or hereafter have against the University arising from incidents or events occurring on or before the Effective Date of this Release. The release set out in this paragraph specifically covers any and all claims arising from or related to Coach's employment with and separation from University employment, or arising from any act or omission by any Releasee occurring before the Effective Date of this Agreement (hereafter "Released Claims"). The release set out in this paragraph is intended to include any and all claims arising under statutory or common law, including but not limited to: claims under the Immigration Reform and Control Act; the Family Medical Leave Act and the Higher Education Employer-Employee Relations Act; and claims of employment discrimination (such as, but not limited to claims under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the Equal

Pay Act of 1963, the Age Discrimination in Employment Act), and claims under the law of contract and tort; and federal and state claims growing out of allegations of retaliation based on alleged or actual whistle-blowing activities; and claims arising under University policies and/or collective bargaining agreements; but excluding claims within the exclusive jurisdiction of the Workers Compensation Appeals Board and any other claims that cannot lawfully be released by private agreement. The Released Claims shall not include claims related to Coach's attempts to collect on amounts owed pursuant to Paragraph 12 of the Employment Contract.

2. **COVENANT NOT TO SUE.** Coach promises never to file or cause to be filed a lawsuit or internal University proceeding to assert any Released Claim. Nothing in this Agreement shall affect the U.S. Equal Employment Opportunity Commission's ("EEOC") rights and responsibilities to enforce Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, or any other applicable law, nor shall anything in this Agreement be construed as a basis for interfering with Coach's protected right to file a charge with, or participate in an investigation or proceeding conducted by the EEOC or any other state, federal or local government entity; EXCEPT THAT, if the EEOC or any other state, federal or local government entity commences an investigation or issues a complaint on Coach's behalf, Coach specifically waives and releases his right, if any, to recover any monetary or other benefits of any sort whatsoever including rights to reinstatement to University employment.

3. **SECTION 1542 RIGHTS WAIVED.** The Parties understand and expressly agree that the release set forth in this Release extends to all claims of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present or future, arising from or attributable to any incident or event relating to Coach's University employment occurring in whole or in part on or before the Effective Date of this Release or Coach's separation from employment pursuant to the Employment Agreement, and that any and all rights granted under Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED.

Section 1542 of the California Civil Code reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

It is the intention of the parties that the releases contained in this Release comply with the provisions of the Older Workers Benefits Protection Act (29 U.S.C. 5 626). To comply with Section 626(f) of that statute and to effectuate the release by Coach of any potential claims under the federal Age Discrimination in Employment Act ("ADEA"), Coach acknowledges and agrees as follows: (a) he has carefully reviewed this Release and understands the terms and conditions it contains; (b) he has been advised of the right to consult any attorney or representative of his choosing to review this Release; (c) he is receiving consideration which is above and beyond anything of value to which he is already entitled; (d) he does not waive rights or claims that may arise after the Effective Date of this Release; and (e) he has twenty-one (21) days from receipt of

this document to consider the terms and to sign it. Coach may sign this document sooner, but if he does so, he acknowledges by signing that the decision to sign was his and his alone, and that as a result, he voluntarily has waived the balance of the 21-day review period. Coach shall also have seven (7) days after executing this Release to reconsider and revoke this Release. Any revocation must be in writing no later than the close of business of the seventh (7th) day following Coach's execution of this Release. This Release shall not become enforceable until the seven (7) day revocation period has expired, or until the date of the last signature, whichever is later. If Coach revokes this Release, it shall not be effective or enforceable and he will not receive the consideration described herein. Notwithstanding any other provision of this Release, the University will have no payment obligation pursuant to this Release until the expiration of seven (7) days after Coach delivers an executed copy of this Release to the University.

**IN WITNESS WHEREOF**, intending to be legally bound, each party has caused this Release to be signed by its duly authorized officer as of the day and year written below.

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:**

By: \_\_\_\_\_  
John Wilton Date  
Vice Chancellor – Administration and Finance

By: \_\_\_\_\_  
Sandy Barbour Date  
Director of Intercollegiate Athletics

**COACH:**

By: \_\_\_\_\_  
Daniel Dykes Date  
Coach

## **APPENDIX C**

### **WAIVER AND GENERAL RELEASE OF CLAIMS**

This Waiver and General Release (hereafter "Release") is entered into by and between Daniel Dykes (hereafter "Coach") and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, on behalf of the UNIVERSITY OF CALIFORNIA, BERKELEY campus (hereafter "University") (collectively referred to as the "Parties").

#### **RECITALS**

**WHEREAS**, Coach was hired by the University on December 7, 2012, as Head Coach - Football; and

**WHEREAS**, Coach's employment is governed by the terms of an existing Employment Contract, the terms of which are incorporated hereto; and

**WHEREAS**, pursuant to Paragraph 13 of the Employment Contract, Coach may terminate his employment by the University without cause prior to the expiration of the Term thereof; and

**WHEREAS**, pursuant to Paragraph 13 of the Employment Contract, in order to receive liquidated damages under this provision, University must execute a waiver and release of all claims against Coach at the time he terminates his employment; and

**WHEREAS**, this waiver and general release of claims shall not include claims related to University's attempts to collect on amounts owed pursuant to Paragraph 13 of the Employment Contract.

**NOW, THEREFORE**, Coach and the University agree as follows:

- 1. RELEASE OF CLAIMS.** University agrees to hereby forever release and discharge Coach from any and all causes of action, judgments, liens, indebtedness, damages, losses, claims (including attorneys' fees and costs), liabilities and demands of whatsoever kind and character that University may now or hereafter have against Coach arising from incidents or events occurring on or before the Effective Date of this Release, provided however that the foregoing does not include any causes of action, judgments, liens, indebtedness, damages, losses and claims, liabilities and demands related to: (a) Coach's willful misconduct, (b) any material violation by Coach of the Employment Contract; or (c) University's attempts to collect on amounts owed pursuant to Paragraph 13 of the Employment Contract ((a)-(c) collectively the "Excluded Claims"). Except for the Excluded Claims, the release set out in this paragraph is intended to include any and all claims arising under statutory or common law, including but not limited to: claims under the law of contract and tort; federal and state claims; and claims arising under University policies and/or



collective bargaining agreements. The claims released by this paragraph (1) are referred to herein as the "Released Claims."

2. **COVENANT NOT TO SUE.** University promises never to file or cause to be filed a lawsuit or internal University proceeding to assert any Released Claim.
3. **SECTION 1542 RIGHTS WAIVED.** The Parties understand and expressly agree that the release set forth in this Release extends to all claims of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present or future, arising from or attributable to any incident or event relating to Coach's University employment occurring in whole or in part on or before the Effective Date of this Release, and that any and all rights granted under Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED.

Section 1542 of the California Civil Code reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
OR HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
WHICH IF KNOWN BY HIM MUST HAVE  
MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
DEBTOR.**

**IN WITNESS WHEREOF**, intending to be legally bound, each party has caused this Release to be signed by its duly authorized officer as of the day and year written below.

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:**

By:

\_\_\_\_\_  
John Wilton  
Vice Chancellor – Administration and Finance

\_\_\_\_\_  
Date

By:

\_\_\_\_\_  
Sandy Barbour  
Director of Intercollegiate Athletics

\_\_\_\_\_  
Date

**COACH:**

By:

\_\_\_\_\_  
Daniel Dykes  
Coach

\_\_\_\_\_  
Date